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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAYSHON THOMAS,
CDCR #G-36628,

Plaintiff,

vs.

L.S. McEWEN, et al.,

Defendants.

Civil No. 12cv2510 BEN (KSC)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, a state inmate currently incarcerated at Calipatria State Prison, and proceeding pro se, has filed a complaint entitled, in part, "Alternate Writ of Mandamus/Prohibition of Statewide/International C.C.A. Complaint." (ECF No. 1).

Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; nor has he filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay this filing fee only

1 if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C.
 2 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
 3 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Plaintiff has not prepaid the \$350 filing fee required to commence a civil action, nor has
 5 he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed pursuant to 28
 6 U.S.C. § 1914(a). *Id.*

7 **II. Conclusion and Order**

8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is filed to:
 12 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 13 IFP which includes a certified copy of his trust account statement for the 6-month period
 14 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIV. L.R. 3.2(b).¹

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
 16 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
 17 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 18 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 19 prejudice and without further Order of the Court.

20
 21 DATED: 10/18/2012


 22 HON. ROGER T. BENITEZ
 23 United States District Judge
 24

25 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed IFP, his Complaint, which is
 27 comprised of a single paragraph of virtually incomprehensible legal jargon and seeks unspecified relief
 28 from the President of the United States, will be screened and no doubt dismissed as frivolous pursuant
 to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27
 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to
 sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v.*
Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C.
 § 1915A(b) of all prisoner complaints).